

S.B. CIVIL WRIT PETITION NO.6857/2007

(Satyanarayan Vs. Birla Cement Works & Anr.)

Date of Order :: 14th November 2007**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. B.N.Kalla, for the petitioner.

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Having heard learned counsel for the petitioner and having perused the material placed on record, this Court is satisfied that this writ petition seeking to question the award dated 22.02.2007 made by the Labour Court, Bhilwara remains totally bereft of substance and does not merit admission.

The petitioner having been removed by his employer by the order dated 18.05.1999 raised an industrial dispute that was ultimately referred by the State Government for adjudication to the Labour Court in the following terms:-

"क्या बदली श्रमिक श्री सत्य नारायण सेन पुत्र श्री काशीराम की लगभग 15 वर्ष की सेवाओं को नियोजक प्रबंधक, बिरला सीमेंट वर्क्स, चंदेरिया, चित्तौड़गढ़ द्वारा दिनांक 18.5.99 के आदेश द्वारा बर्खास्त किया जाने का दंड उचित परिमाण में है ? यदि नहीं, तो श्रमिक की बर्खास्तगी उचित है अथवा नहीं ? श्रमिक किस राहत को पाने का हकदार है ?"

It appears from the material placed on record that the petitioner alleged before the Labour Court that he was on leave without pay from 08.02.1999 to 28.02.1999 on account of ailment; that his having not recovered from illness sent

information for absence from 01.03.1999 and ultimately reported on duty on 17.05.1999 with fitness certificate. According to the petitioner, during the period of his ailment, the employer issued a charge-sheet on 23.03.1999 that was not received by him and he came to know about the ex parte proceedings only upon reporting for duty on 17.05.1999. The petitioner alleged that he made a request for setting aside of ex parte proceedings and for supplying him copy of charge-sheet and produced medical certificate but he was illegally removed from service on 18.05.1999 without opportunity of hearing. The employer, in response to the statement of claim made by the petitioner, asserted that the charge-sheet was duly served upon the petitioner on 26.03.1999 but he did not furnish any explanation and did not participate in the enquiry proceedings that were required to be proceeded ex parte; that inquiry report was filed on 13.04.1999 that was supplied to the petitioner by the registered letter and that too was not responded by him. The employer alleged that production of medical certificates on 17.05.1999 was farcical and the petitioner was not suffering from any ailment and deliberately did not participate in the proceedings. It was pointed out that in the past also, the petitioner was subjected to disciplinary proceedings for unauthorised absence and was extended opportunity to improve himself but he failed to do so.

By a separate order dated 08.08.2006, the learned Labour Court has found the disciplinary proceedings against the petitioner not suffering from any infirmity as referred in paragraph-5 of the impugned award. A copy of said order dated 08.08.2006 has not been filed with this writ petition nor any ground has been urged in challenge to the same.

The learned Labour Court has considered the entire material available on record and has found that the petitioner did not participate in the proceedings despite the employer extending him opportunity and has also found with reference to the documents Ex.M-5 and Ex.M-6 that the petitioner was found guilty of serious misconduct in the past also but the employer extended him an opportunity to improve himself. In the overall circumstances of the case, the Tribunal has found no case to interfere with the quantum of punishment and has answered the reference accordingly.

A look at the memorandum of allegations against the petitioner makes it clear that the petitioner took his employment for granted and habitually remained absent for over 200 days in the years 1995, 1996, 1997 and 1998. In the year 1999, he went on leave on 08.02.1999 and did not state a proper response even after receiving charge-sheet on 26.03.1999. The medical certificates produced on record towards the alleged ailment from 01.03.1999 to 16.05.1999 do not inspire confidence nor there is any other corroborative

evidence on record to believe that the petitioner was suffering from such ailment that he could not have responded to charge-sheet. In any case, for the learned Labour Court having been found the disciplinary proceedings valid and proper and not suffering from any infirmity by its order dated 08.08.2006; and the said order dated 08.08.2006 having not been put to challenge, there appears no scope for the petitioner questioning the award dated 22.02.2007 only in relation to quantum of punishment.

Even otherwise, looking to the overall fact situation, the petitioner cannot be believed to be carrying the confidence of his employer particularly when he would consciously choose to remain absent for abnormally long period in every calendar year. The employer afforded the petitioner opportunity to correct himself but obviously he had failed to improve. In the present enquiry proceedings, the employer afforded him fullest opportunity of hearing; and it appears that the petitioner avoided to avail of the said opportunity in order to carve out some ground to question the enquiry proceedings. The conduct of the petitioner does not inspire confidence.

From every angle, there appears no scope for interference in the award made by the Labour Court.

The writ petition fails and is, therefore, rejected.

(DINESH MAHESHWARI),J.